

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **24 February 2021**

Public Authority: **Chief Constable of Bedfordshire Police**

Address: **Bedfordshire Police Headquarters**

Woburn Road

Kempston

Bedford

MK43 9AX

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-45482-G6S9, for a decision whether a request for information made by the complainant to Bedfordshire Police on 4 May 2020, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

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2. On 4 May 2020, the complainant made the following request for information under the FOIA:

"Please send an electronic copy of IOPC report 2018/112181".
 3. Bedfordshire Police responded on 2 June 2020 and cited section 21 (Information accessible by other means) of the FOIA, advising that the information was available online; it provided a link to a summary of the related investigation.
 4. The complainant requested an internal review on 2 June 2020, saying that he wanted a copy of the full report.
 5. Bedfordshire Police provided an internal review on 2 July 2020 in which it advised that the unpublished parts of the report were withheld under section 40(2) of the FOIA.
 6. On 2 July 2020, the complainant wrote to the Commissioner to complain about the response.
 7. On 1 December 2020, the Commissioner wrote to Bedfordshire Police raising various queries to assist with her investigation of the complaint.
 8. On 20 January 2021, having received no acknowledgement regarding her enquiries, the Commissioner chased a response. On the same day, Bedfordshire Police advised that it was unable to locate her email of 1 December 2020 and asked for a copy; this was forwarded, again on the same day.
 9. On 26 January 2021, Bedfordshire Police replied. It provided a copy of the withheld information, but failed to respond to any of the Commissioner's enquiries or to highlight those parts of the report which it considered to be exempt. The Commissioner advised it accordingly on the same day.
 10. On 12 February 2021, Bedfordshire Police replied advising that it considered the whole report to be exempt. It again failed to respond to the Commissioner's specific enquiries.
 11. On 15 February 2021, the Commissioner advised Bedfordshire Police that if it failed to respond to her enquiries by 19 February 2021 she would necessarily issue an Information Notice.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that Bedfordshire Police shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
13. Bedfordshire Police is required to respond in full to all the questions in the email which the Commissioner sent to it on 1 December 2020, and again on 20 January 2021, namely:

"... Please answer the following questions in relation to the exemption cited.

Section 40 – personal information

In order to assist the ICO's consideration of the application of section 40(2) please identify whose personal data Bedfordshire Police considers the requested information to be.

Please explain why this information is that individual's/those individuals' personal data.

Is Bedfordshire Police position that all of the remaining withheld information is personal data?

Criminal offence data

Has Bedfordshire Police considered whether any of the withheld information also constitutes criminal offence data?

If applicable, please explain why you consider the personal data in question to be criminal offence data.

Please confirm that you have considered the conditions for processing as set out in Schedule 1, Parts 1-3 of the DPA 2018 (http://www.legislation.gov.uk/ukpga/2018/12/pdfs/ukpga_20180012_en.pdf) but have been unable to satisfy any of them in order to disclose this personal data. Please note that the Commissioner considers that it is unlikely that one of these conditions will be satisfied in relation to a disclosure under the FOIA. The conditions that could be relevant are Part 3 paragraph 29 – consent from the data subject and Part 3 paragraph 32 – data made manifestly public by the data subject.

Principle (a)

Article 5(1)(a) GDPR states that personal data shall be: "processed lawfully, fairly and in a transparent manner in relation to the data subject".

To determine whether or not disclosure is lawful, Bedfordshire Police should consider whether there is a lawful basis for processing in Article 6(1) of the GDPR:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".

The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- i) *Legitimate interest test: Whether a legitimate interest is being pursued in the request for information.*
- ii) *Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question.*
- iii) *Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.*

The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

Has Bedfordshire Police identified any legitimate interests in disclosure in this case?

Is disclosure necessary?

'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable

necessity which involves the consideration of alternative measures, and therefore disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

Please set out why you concluded that disclosure is not necessary in this case. How else could the legitimate interests be met in this case?

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

It is necessary to balance the legitimate interests in disclosure against the data subject(s)' interests, fundamental rights or freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA, and/or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?

What reasonable expectations does the individual have about what will happen to their personal data?

Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?

Please describe the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual/s concerned).

Please set out your conclusions as to the balance between the rights and freedoms of the data subject/s in this case and the legitimate interests of the public in accessing this information.

Please ensure you refer to the specific circumstances of this case.

If not already addressed in the legitimate interest test above, has Bedfordshire Police considered whether disclosure would be more generally unlawful, for example, by breaching a contractual or other legal obligation or breaching the right to privacy in Article 8 of the Human Rights Act?

Fairness

Please set out why you believe disclosure would not be fair if different to the considerations of the data subject(s)' interests, fundamental rights or freedoms above".

Failure to comply

14. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

15. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF